

February 12, 2009

BY ELECTRONIC DELIVERY

Judge Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Avi Koschitzki v. Apple Inc. & AT&T Mobility LLC*, No. CV08-4451 (JBW)

Dear Judge Weinstein:

I am a partner with the law firm of Mayer Brown LLP, which is counsel to defendant AT&T Mobility LLC ("ATTM") in the above-captioned case. I write to request that the March 13, 2009 evidentiary hearing on ATTM's motion to compel arbitration and plaintiff Avi Koschitzki's motion to strike the declaration of Richard A. Nagareda, which the Court scheduled by order on Wednesday, February 11, 2009, be taken off calendar. ATTM requests that the Court instead hear oral argument on the pending motions and on whether an evidentiary hearing on either motion is appropriate. As ATTM will explain in further detail in its reply brief, an evidentiary hearing would be an unnecessary burden to the Court, the parties, and the witnesses, who would need to travel from Washington state, California, Texas, and Georgia in order to attend the hearing. The oral argument may eliminate the need to have any evidentiary hearing at all, or at a minimum would simplify the issues to be covered at any such hearing.

Sincerely,

Sean Patrick Casey
Sean Patrick Casey

MAYER • BROWN

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

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*Noting:
oral argument,
without witnesses,
will be heard on
date scheduled,
with
evidentiary
to take
place
shortly
thereafter
if required.
So ordered
JW 2/12/09*